(1)

Supreme Court, U.S.
FILED

04-769 OCT 12 2004

OFFICE OF THE CLERK

No.

In The

SUPREME COURT OF THE UNITED STATES

October Term, 2004

JANE ROE AND JACK DOE, INFANTS IN POSSE,

BY AND THROUGH NEXT FRIEND,

FREDERICK G. JENSEN,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

PETITION FOR WRIT OF CERTIORARI

Frederick G. Jensen
P.O. Box 7001
Olympia, WA 98507
(Next Friend)

I S S U E

1. May an embryo unimplanted in the contemplation of the statute formed after rape be destroyed with colorable legality by administering a "double dose of abortifacient drugs" (E.C.P's or DES)?

2. May the next friend of these embryos represent them to file a plea to be let alone under the 13th Amendment to the United States Constitution?

PETITION FOR WRIT OF CERTIORARI

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BEST AVAILABLE COPY

STATEMENT OF THE CASE

Come now Jane Roe and Jack Doe, being infants in posse, by and through a next friend Frederick G. Jensen, whose potential lives are endangered by an act, Namely, SSB 6537, enacted June 13, 2002, with RCW 70.41.350 and 70.41.360, now coded. The infant plaintiffs were denied the temporary protection of a court order (TRO) in Superior Court for Thurston County on June 10, 2002 in the State of Washington in case 02-2-00539-6, which was sumarily dismissed on June 14, 2002

On appeal in November 3, 2003 the Division II of the Court of Appeals in No. 30265-9-II, decided through an unpublished case. "Without reaching the merits of his claim (Jensen's) we affirm as Jensen cannot represent the potential unborn victims..."

On September 9, 2004 the Department II of the Supreme Court of the State of Washington concluded in 75041-6: That the petition for review is denied.

In the absence of a hearing before the entire court en banc in Washington, this plea for preborn life is herewith made before the Supreme Court and the people of the United States.

REASON FOR THE SUIT

It is provided in 28 F.R.C.P. 17, 28 U.S.C.(c) "...An infant or incompetent person who does not have a duly appointed representative may sue by a next friend..."

Currently, in abortion cases, the unborn babe is denied representation on the technical rational it cannot be recognized to be a person by the 14th Amendment to the Constitution of the United States. In this view the conceptus, embryo, and a pre-born fetus can actively be denied the potential of such life as it possesses. See Roe v.Wade, 410 U.S. 113 (1973) and Roe v. Casey, 464 F. Supp. 483, C.C. Pa (1978).

ISSUE

1. May an embryo unimplanted in the contemplation of the statute formed after rape be destroyed with colorable legality by administering a "double dose of abortifacient drugs" (E.C.P's or DES)?

2. May the next friend of these embryos represent them to file a plea to be let alone under the 13th Amendment to the United States Constitution?

ARGUMENT

In this case in 2002 and in 2003 cases courts in Washington responded to their conclusion that a child unborn is not a "person" in the sight of the law, and suggesting the plain language of F.R.C.P. 17(c) was being used by this next friend illicitly.

In 2004 there appeared a case in our lawbooks that seems to show there is no grievous resistance to representation for an unborn before birth. Free instruction in the character of representation for potential life, given the strictures of an ancient "bornalive" rule of the common law is available in

Wixtrom v. Department of Children and Families (In re J.D,S.) 864 So. 2d 534, 2004 Fla. App. LEXIS 161, 29 Fla. L. Weekly D 198 (Fla. Dist Ct. App. 5 Dist. 2004). In that case a young but incompetent mother was delivered of a healthy baby, that was given up for adoption by the authorities before the opinion of the court was handed down.

The majority of the court concluded, weighing the needs of the mother, represented by a guardian, versus the needs of the preborn infant represented by a guardian as well, was a matter of policy sent properly to the Legislature, since the Legislature wrote the guardian ad litem statute. Note decision page 540: "The Legislature is the appropriate forum to debate the proper balance between the state's compelling interest in protecting the unborn and the mother's constitutional right to privacy and personal bodily integrity,..."

Orbinger, J., Concurring specially.

On dissent, Pleus, J., noted on page 548 that "A guardian on behalf of the unborn baby would act as an advocate of the State's interest in that life." (N.B. In the third trimester in this case.)

Judge Pleus felt that he had a logical point to make: "This (the need of an adversarial hearing) is best achieved by reguiring that upon the petition of the guardian of the mother for authority to abort the mother's child, a guardian for the unborn child be appointed to represent the child's

interest at the hearing."

Then, follows the reason why: "To construe the statute otherwise would render the requirement of a judicial determination based on clear and convincing evidence meaningless and lead to the absurdity of trying to obtain clear and convincing evidence when that evidence is ex parte and uncontested."

The courts forget that it was the judiciary in the U.S. Supreme Court, that declared marriage is a mere "association of individuals" each with a separate intellectual and emotional makeup, and no independent entity with a mind and heart of its own. Each individual has the right to use contraceptives privately, including single people. Where contraception fails, every woman has a private right to abort. To cope, the Court created both the compelling interest test and the undue burden test which literally split the unborn child in half. The courts now wish to drape the cloth over legislative shoulders.

The dissent mistakes, also, when it opines the welfare rights of the unborn are necessarily set in the compelling interest of the state or in a burden to the mother. The constitutional right to bear and and beget a child is turned on its noggin to create the colorably legal right to abort. It follows that the father's interest in his child is destroyed. It makes a mockery of the marital relationship.

If the integrity of life and right are no more self-evident, but are now in the gift of the state,

rather than the gift of the Creator, then we have a poor perception of what is freedom.

Case or code is not involved. When the law can attempt to evaluate one life in terms of another, a single embryo against an adult, we are mistaken for a generation in what we mean by liberty and justice for all.

Specifically, the 13th Amendment forbids "involuntary servitude" whether it is the sale of a male or a female, or whether it concerns a nonwhite or a nonperson.

CONCLUSION

The right of a mother to bear and beget a child in freedom is grounded in the 13th Amendment to the Constitution and the source of any right of a child before birth is necessarily the same.

The freedom to do does not extend to the right to undo.

Date _____

/S/_____
Frederick G. Jensen,
Next Friend
P.O. Box 7001
Olympia, WA 98507

WASHINGTON STATE COURT OF APPEALS

Division II

950 Broadway, Suite 300, Tacoma, Washington 98402
David Ponzoha, Clerk/Adm. (253 2970
http://www.courts. wa.gov/courts

November 13, 2003

Frederick G. Jensen
P.O. Box 7001
Olympia, WA 98507

Jeffrey Todd Even
Attorney at Law
Ofc of Atty Gen
P.O. Box 40100
Olympia, WA, 98504-0100

Case #: 30265-9-II
Jane Roe, Jack Doe, Infants in Posse, v. State of Washington, Respondent

Counsel:

An opinion was filed by the court today in the above case. A copy of the opinion is enclosed.

Very truly yours,

David C. Ponzoha
Court Clerk

DCP:cjb
Enclosure

cc: Judge Paula Casey

Ex. A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

Division II

FREDERICK G. JENSEN, as
Next Friend on behalf of

JANE ROE and JACK DOE,
INFANTS IN POSSE,

Appellant,

v.

ATATE OF WASHINGTON,

Respondent,

No. 30265-II

UNPUBLISHED
OPINION

Houghton, J.— Frederick G. Jensen as Next Friend appeals from an order dismissing his claim against the State of Washington for a declaration of invalidity as to RCW 70.41.350[1]. The trial court dismissed the claim because Jensen, as a pro se litigant, cannot represent other parties and failed to secure an attorney to represent his proffered class. Without reaching the merits of his underlying claim, we affirm as Jensen cannot represent the potential unborn victims of sexual assault.

FACTS

On March 26, 2002, Governor Locke signed sub-

[1] Substitute Senate Bill 6537, Laws of 2002, ch. 116 §3

Ex. A

stitute Senate Bill 6537, which, in short, required hospital emergency treatment providers to provide an emergency contraception option to sexual assault victime. Laws of 2002, ch. 116, § 3, On April 3, Jensen filed a complaint in Thurston County Superior Court entitled, "Complaint And Plea For Life." Clerks Papers (CP) at 4. The complaint stated in part:

> JURISDICTION AND STANDING
>
> This action is a class action brought in the interest of threatened unborn by next friend Frederick G. Jensen, POB 7001 Olympia, WA 98507 under RCW 4.92.030 allowing the State to be sued for tort, under CR 17 that provides for representation of in competent parties, and CR 23(b)(c) that permits class actions.
>
> Infants that are not and at the same time will be, since they posses the power to be born, complain the act of the Legislature unlawfully deprives them of the Creator's unalienable gift of life and the freedom to pursue happiness without due process of law. The issue, then, is the right of the State to assign to anyone the decision to terminate life or to attempt to terminate the potentiality of such life as is possessed by every individual at conception.

CP at 4.5, Jenkins (Jensen?) sought class certification and that the court defer the effective date of the legislation until this case was resolved. On April 11, the State responded by filing a motion to dismiss under CR 12(b)(6) on the grounds that Jensen was not an attorney and could not represent others' interests, On May 17, the court ruled that the case would be dismissed unless Jensen obtained counsel by

June 10. On June 14, the court entered a written order dismissing the complaint, providing in part:

> Finding that Mr. Jensen has not obtained the representation of counsel, and having reviewed Mr. Jensen's pro se Motion for a Temporary Restraining Order to Preserve Life, and the members of the class identified in this action are not represented,
>
> The Court ORDERS, ADJUDGES, and DECREES as follows:
> 1. Defendant's Motion to Dismiss is GRANTED and,
> 2. This Order shall constitute a final judgment in this action.

CP at 52-53. Jensen appealed to our Supreme Court which transferred the case to this court under RAP 4.2(e)(1).

ANALYSIS

The sole issue on appeal is whether the trial court properly dismissed this appeal because Jensen could not represent any interests other than his own. He relies on RCW 4.92.030 and CR 17(c).[2] But he does not explain why RCW 4.92.030 allows him to represent others.[3] In examining his pleadings, it

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[2]Jensen cites RAP 17(c) but no such rule exists. We assume he is referring to CR 17(c).

[3]RCW 4.92.030 states that the attorney general shall represent the state in any actions against it. It provides: "The attorney general or an assistant attorney general shall appear and act as counsel for the State. The action shall proceed in all respects as other actions. Appellate review may be

appears that he is referring instead to RCW 4.92.010 which provides in part: "Any person or corporation Having any claim against the state of Washington shall have a right of action against the state in superior court."

Assuming for the sake of argument that infants in posse are persons under this statute,[4] the statute does not give Jensen a right to sue on their behalf. Neither does CR 17, which provides in part:

> **Designation of Parties.** The party commencing the action shall be known as the plaintiff, and the opposite party as the defendant.
>
> (a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.
>
> ....
>
> (c) Infants, or Incompetent Persons.

[4]We need not resolve whether potential infants have standing to sue.

(1) Scope. Generally this rule does not affect statutes and rules concerning the capacity of infants ad incompetents to sue or be sued.
(2) Guardian Ad Litem vor Infant.
[Reserved. See RCW 1.08.050.]

A pro se litigant may only represent his own interests. Hagan & van Camp, P.S. v Kassler Escrow, Inc., 96 Wn. 2d 443, 450-51, 635 P. 2d 730 (1981); State v. Hunt, 75 Wn. App.795, 805, 880 P. 2d 96, review denied, 125 Wn. 2d 1009 (1994). While CR 17 allows a guardian ad litem to sue on behalf of an infant, Jensen is not a guardian ad litem and has never petitioned the court to be one. He signed the complaint without authority and therefore the trial court properly dismissed the claim. CR 11. Cf. RAP 16.6(a) (guardian, conservator, parent, or attorney may file personal restraint petition on petitioner's behalf); Coalition of clergy, Lawyers, and Professors v. Bush, 310 F. 3d 1153, 1157-63 (9th Cir 2002) (someone bearing a close relationship to specific real party in interest may bring a habeas corpus petition or death penalty appeal on that person's behalf).

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Apellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Houghton, J.

We concur:
Morgan, P.J., Bridgewater, J.

Ex. A

IN THE SUPREME COURT OF WASHINGTON

FREDERICK G. JENSEN,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

ORDER

No. 72864-0

Thurston County
No. 02-2-00539-7

Department I of the Court (composed of Chief Justice Alexander and Justices Johnson, Sanders, Bridge and Owens) considered this matter at its April 29, 2003, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That this case is transferred to Division II of the Court of Appeals.

DATED at Olympia Washington, this 29th day of April 2003.

For the Court,

_____
CHIEF JUSTICE

THE SUPREME COURT OF WASHINGTON

JANE ROE and JACK DOE,
INFANTS IN POSSE,

Petitioners,

V.

STATE OF WASHINGTON,

Respondent.

NO. 75041-6

ORDER

C/A NO. 30265-9-II

Department II of the Court, composed of Chief Justice Alexander and Justices Madsen, Ireland, Chambers and Fairhurst, considered this matter at its September 8, 2004, Motion Calendar, and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petition for Review is denied.

DATED at Olympia Washington this 9th day of September, 2004.

For the Court

CHIEF JUSTICE

Ex. C

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JANE ROE, JACK DOE, INFANTS
IN POSSE, BY AND THROUGH NEXT FRIEND, FREDERICK G. JENSEN,

Appellant,

V.

STATE OF WASHINGTON,

Respondent.

NO. 75041-6

NOTICE OF APPEAL

Come now Jane Roe and Jack Doe, Infants in Posse, by and through next friend Frederick G. Jensen, whose potential life is threatened by the terms of RCW 70.41.350 and 70.41.360 (SSB 6537, enacted June 13th 2002) who were denied the protection of Temporary restraining order (TRO) in Superior Court of Thurston County in No. 02-2-00539-7, a case which was summarily dismissed on June 14th.

The Court of Appeals, Division II in No. 30265-9-II on November 3, 2003 decided in an unpublished decision: "Without reaching the merits of HIS (Jensen's?) underlying claim, we affirm as (sic) Jensen cannot represent the potential unborn victims of sexual assault." (Emphasis supplied here.) Department II of the Supreme Court on September 9, 2004 in No. 75041-6 unanimously decreed: "That the Petition for review is denied."

Ex. D

In the absence of a hearing before the full court, as denied by the clerk of the court on September 24, 2004 this plea for life will be made before the Supreme Court of the United States.

Date Oct. 2, 2004 /S/_____
Frederick G. Jensen

THE SUPREME COURT
State of Washington

C.J. Merrit
Supreme Court Clerk

Temple of Justice
P.O. Box 40929
Olympia, WA 98504

Ronald R. Carpenter
Deputy Clerk/Chief Staff Attorney

(360) 357-2077

September 24, 2004

Frederick G. Jensen
PO Box 7001
Olympia, WA 98507

Jeffrey Todd Even
Office of the Att'y Gen.
PO Box 40100
Olympia, WA 98503-0100

Hon. David Ponzoha, Clerk
Division II, Court of Appeals
950 Broadway, Suite 300
Tacoma, WA 98402-4454

Re: Supreme Court No. 75041-6-Jane Roe, Jack Doe, infants in Posse v. State of Washington Court of appeals No. 30265-9-II

Clerk, Counsel, and Mr. Jensen:

This will acknowledge receipt on September 24, of the Petitioner's "MOTION FOR RECONSIDERATION OF DECISION TERMINATING REVIEW". The pleading seeks reconsideration of this Court's September 9, 2004 order denying the petition for review.

A denial of a petition for review is not subject to reconsideration. The RULES OF APPELLATE PROCEDURE (RAP) PROVIDE THAT A Party may file a motion for reconsideration of "a decision terminating review", see RAP 12.4(a). One element of "a decision terminating review" is that it must be an opinion, order or judgment of the appellate court after review is accepted, see RAP 12.3a). A denial of a petition for review is an act declining to accept review. As such the Court's decision on the Petition for review is not subject to reconsideration.

Ex. E

Accordingly, although the pleading has been placed in the closed file, this Court can take no further action on it.

Sincerely,

RONALD R. CARPENTER
Supreme Court Deputy Clerk

RRC:dre

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[1] It is noted that the Department of the Court that unanimously denied the petition for review was comprised of five of the nine Justices of this Court, a majority of the Court